

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application of: Palese et al. Confirmation No.: 3723
 Serial No.: 10/713,732 Art Unit: 1648
 Filed: November 14, 2003 Examiner: Blumel, Benjamin P.
 For: ATTENUATED NEGATIVE STRAND Attorney Docket No.: 6923-118
 VIRUSES WITH ALTERED
 INTERFERON ANTAGONIST
 ACTIVITY FOR USE AS VACCINES
 AND PHARMACEUTICALS

**SECOND SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT
UNDER 37 C.F.R. §1.56 AND §1.97**

Mail Stop After Final
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

Sir:

In accordance with the duty of disclosure imposed by 37 C.F.R. §1.56 and §1.97 to inform the Patent Office of all information coming to the attention of each individual associated with the filing or prosecution of the subject application, which are or may be material to the patentability of any claim of the application, Attorneys for Applicants hereby invite the Examiner's attention to documents C35-C40 listed on the attached revised form PTO 1449 entitled "List of References Cited by Applicant." Copies of documents C35-C40 are submitted herewith.

- C35: Copy of a letter, dated August 4, 2006, from Andrej Egorov and Sabine Brandt to Peter Palese;
- C36: Copy of a letter, dated August 4, 2006, from Andrej Egorov and Sabine Brandt to Adolfo Garcia-Sastre;

- C37: Copy of a "Communication pursuant to Article 115(2) EPC," dated November 9, 2006, issued in connection with European Patent Application No. 99 927 445.9-1222, with enclosures;
- C38: Copy of a letter, dated November 22, 2006, from Maneula Loidl to Todd Pazdera, with enclosures;
- C39: Copy of a letter, dated April 9, 2007, from Michael F. Fedrick to Laura A. Coruzzi, with enclosures; and
- C40: Copy of an "Expert Opinion," dated October 20, 2006.

Contrary to the allegations in C35-C39, Attorneys for Applicants do not believe that either Dr. Brandt or Dr. Egorov have contributed conceptually to the subject matter of the claims currently pending. The activities alleged in C35-C39 relate to the construction of influenza NS1 mutants reported in references BC, BD and DC of record in the subject application.¹ These have been considered by the Examiner, who has deemed the claims to be free of the prior art.

It is also noted that the publications identified in C40 are of record in the subject application and have been considered by the Examiner.

Identification of C35-C40 is not to be construed as an admission of Applicants or Attorneys for Applicants that these documents are available as "prior art" against the subject application. Attorneys for Applicants respectfully request that the Examiner review the foregoing and that C35-C40 be made of record in the file history of the application.

¹ See:

Egorov A *et al.*, "Transfected Influenza A viruses with long deletions in the NS1 protein grow efficiently in Vero cells," *J. Virol.* 1998 Aug; 72(8):6437-6441 (reference BC);

Egorov AY *et al.*, "Generation of influenza A transfected viruses containing deletions of the carboxyl-terminal part of the NS1 protein," in Emergence and Re-emergence of Negative Strand Viruses, Tenth International Conference on Negative Strand Viruses. 1997, Dublin, Ireland, Abstract No. 108, p. 104 (reference BD); and

Egorov *et al.*, 1997, "Generation of Influenza A Transfected Viruses Containing Deletions in the NS1 Protein", Institute of Applied Microbiology," in Emergence and Re-emergence of Negative Strand Viruses, Tenth International Conference on Negative Strand Viruses, September 21-26, Dublin, Ireland (reference DC).



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4/11/2008

Pursuant to 37 C.F.R. § 1.97(b)(4), Attorneys for Applicants estimate that no fee is due in connection with the filing of this Information Disclosure Statement. However, should any fee be due, the Patent Office is authorized to charge the required fee to Jones Day Deposit Account No. 50-3013. A duplicate of this sheet is enclosed for accounting purposes.

Respectfully submitted,

Date: April 11, 2008

Laura A. Coruzzi 30,742
Laura A. Coruzzi (Reg. No.)
JONES DAY
222 East 41st Street
New York, New York 10017
(212) 326-3939

Enclosures